50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Nonessential Experimental Population Status for Introduced Population of Yellowfin Madtom

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to reintroduce a small catfish, the yellowfin madtom (*Noturus flavipinnis*) (federally listed as a threatened species), into the North Fork Holston River, Smyth County, Virginia, and determine any resultant population in Virginia and Tennessee to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended. Section 10(j) of the Act authorizes nonessential populations to be treated as if they were proposed species for purposes of the review of other Federal agency actions under section 7 (see 50 CFR 17.83). The yellowfin madtom once likely inhabited many of the lower gradient streams of the Tennessee River basin upstream of Chattanooga, Tennessee. Presently, populations are confined to only three stream reaches in the Tennessee River valley. This action is being taken in an effort to reestablish the yellowfin madtom within its historic range. Comments and information pertaining to this proposal are sought from the public.

DATE: Comments from all interested parties, including the States of Tennessee and Virginia and the public, must be received by November 9, 1987.

ADDRESS: Interested parties or organizations are requested to submit comments to the Field Supervisor, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321). Comments and materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins (704/259–0321 or FTS 672–0321) at the above address.

SUPPLEMENTARY INFORMATION:

Background

Among the significant changes made by the Endangered Species Act Amendments of 1982, Pub. L. 97–304, was the creation of a provision (section 10(j)) which provides for the designation of specific populations of listed species as nonessential experimental populations. Under previous authorities in the Act, the Service was permitted to reintroduce populations into unoccupied portions of a listed species' historic range when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool. Under section 10(j) of the 1982 Amendments, past and future reintroduced populations established outside the current range but within the species' historic range, may be designed, at the discretion of the Service, as experimental populations or nonessential experimental populations. Experimental population status allows the Service to treat an endangered species as threatened for the purposes of section 9 of the Act. Species listed as

threatened can be managed with greater flexibility, especially regarding incidental take and regulated taking. As the yellowfin madtom is already listed as a threatened species with special rules (50 CFR 17.43) which provide that the fish may be taken in accordance with applicable State law, the species' status relative to section 9 will remain the same for any introduced populations. Nonessential populations are experimental populations found to be nonessential to the continued existence of the species. These populations are treated as if the species were only proposed for listing under section 7 (except to subsection a(1)). Therefore, they are not subject to the provisions of section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species. However, two provisions of section 7 would apply on these non-Service lands: Section 7(a)(1), which authorizes all Federal agencies to establish conservation programs; and section 7(a)(4), which requires Federal agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. Neither of these provisions will legally bar actions on projects which might impact this experimental population. The organisms used to establish an experimental population will only be removed from an existing source if (1) the removal will not jeopardize the continued existence of the species and (2) a permit has been issued for the take of the donor organisms in accordance with the requirements of 50 CFR 17.31.

The yellowfin madtom was listed as a threatened species with critical habitat on September 9, 1979 (42 FR 45527). The species was probably once widely distributed in many lower gradient streams of the Tennessee River drainage upstream of the Chattanooga, Tennessee, area (Jenkins 1975). The species' present distribution (Burkhead and Jenkins 1982, Shute 1984) is represented by only three known populations (Citico Creek, Monroe County, Tennessee; Powell River, Hancock County, Tennessee; and Copper Creek, Scott and Russell Counties, Virginia). Three other known populations (Chickamauga Creek, Catoosa County, Georgia; Hines Creek, Anderson County, Tennessee; and North Folk Holston River, Smyth County, Virginia) are believed to have been extirpated primarily due to human-related factors (impoundments, pollution, habitat modification, etc.).

The yellowfin madtom occupies small-to-medium-sized (25 to 135 feet wide) warm water streams with moderate current and clean water with little siltation (Jenkins 1975). The species is generally associated with cover (undersides of flat rocks, detritus, and stream banks) (Jenkins 1975, Shute 1984).

Good habitat for the yellowfin madtom is currently located in the North Fork Holston River, Smyth County, Virginia. The establishment of an experimental population in this now unoccupied historic habitat will greatly enhance the recovery potential of this species. It is proposed, during the late summer or early fall of 1987, that 100 to 200 captive-reared madtoms (taken in the spring and summer of 1987 from nests on Citico Creek, Monroe County, Tennessee) will be introduced into one or two pools on the North Fork Holston River, Smyth County, Virginia. The techniques for rearing and transplanting the species were developed in 1986 when a reintroduction was made into Abrams Creek, Blount County, Tennessee. The success of this introduction attempt will be evaluated in the summer and fall of 1987.

Based on studies conducted on the Citico Creek population (Shute 1984; David Etnier, Peggy Shute, and Randy Shute, personal communication, 1986), it is believed that approximately 125 yellowfin madtom clutches exist in the creek each year. The yellowfin madtom has a clutch size of about 90 eggs. Three to four nests would be taken, and, allowing for mortality, these would yield the desired 100 to 200 individuals for stocking. The removal of three to four nests represents only about 13 percent of the total clutches. This amount of loss is well within the limit of natural loss that would likely occur on an average reproductive year (D. Etnier, P. Shute, and R. Shute, personal communication, 1986). Therefore, the Service believes the removal of the animals from Citico Creek to be used in the North Fork Holston River transplant is not likely to jeopardize the continued existence and viability of the Citico Creek population. Furthermore, the creation of this experimental population, as proposed, will further the conservation of the species throughout its range.

Status of Reintroduced Population

This reintroduced population of yellowfin madtoms is proposed to be designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The nonessential experimental population status, which is necessary to gain the acceptance of the Virigina Commission of Game and Inland Fisheries, is appropriate for the yellowfin madtom for the following reasons: Reproducing populations of the yellowfin madtom presently exist in three river reaches. The removal of individuals from the extant population in Citico Creek, Monroe County, Tennessee, is not expected to adversely affect the viability of that population (see Background section above). Therefore, the loss of the introduced population would not reduce the likelihood of the survival of the species in the wild. In fact, the anticipated success of this reintroduction will enhance the species' recovery potential by extending its current range and reoccupying currently unutilized historic habitat.

Location of Reintroduced Population

The site proposed for reintroduction of the yellowfin madtom is totally isolated from existing populations of the species. The madtom will be released into the North Fork Holston River, Smyth County, Virginia. This site is separated from other existing populations by both Tennessee River and tributary reservoirs, and the fish is not known from any of these reservoirs or intervening river sections. These reservoirs and river sections will act as barriers to any movement by the fish and assure that the Holston River population will remain geographically isolated and easily identifiable as a distinct population.

Management

This translocation project will be a joint cooperative effort among the Virginia Commission of Game and Inland Fisheries, the Tennessee Wildlife Resources Agency, and the U.S. Fish and Wildlife Service. Present plans call for the release of 100 to 200 young-of-the-year animals in the late summer or early fall of 1987. Subsequent releases will be made contingent on funds in 1988 and 1989. Released animals will be monitored to determine survival, reproductive success, and general health.

This proposed nonessential experimental population would be treated as a threatened species under all provisions of the Act, except section 7. Under section 7 (other than subsection (a)(1) thereof) the nonessential experimental population shall be treated as a species proposed to be listed under the Act as a threatened species. All of the prohibitions referred to in 50 CFR 17.31 would apply to this population. In addition, members of this experimental

population could be taken in accordance with applicable State laws. Thus, if a fisherman accidentally took a member of this experimental population based upon a misidentification of the species, there would be no violation of Federal law.

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby invited to be submitted (see **"ADDRESSES"** section) from the public, concerning government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

Final promulgation of a rule to implement this proposed action will take into consideration any comments or additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

A draft environmental assessment under the National Environmental Policy Act has been prepared and is available to the public at the Service's Asheville Field Office (see **"ADDRESSES"** section), Atlanta Regional Office (U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303), or the Office of Endangered Species, U.S. Fish and Wildlife Service, 1000 N. Glebe Road, Arlington, Virginia 22201 (202/235–2760). This assessment will form the basis for a decision, to be made prior to the publication of a final rule, as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500 through 1508).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The U.S. Fish and Wildlife Service has determined that this is not a major rule as defined by Executive Order 12291 and that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). No private entities will be affected by this action. The rule as proposed does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Reference Cited

Burkhead, N.M., and R.E. Jenkins. 1982. Five-year status review of the yellowfin madtom, *Noturus flavipinnis*, a threatened ictalurid catfish of the Tennessee drainage. Unpublished report to the U.S. Fish and Wildlife Service. 10 pp.

Jenkins, R.E. 1975. Status of the yellowfin madtom, *Noturus flavipinnis*. Unpublished report to U.S. Off. Endang. Spec. Internat. Activities, Washington. 11 pp.

Shute, P.W. 1984. Ecology of the rare yellowfin madtom *(Noturus flavipinnis)* Taylor, in Citico Creek, Tennessee. Masters thesis. University of Tennessee, Knoxville, TN. 100 pp.

Authors

The principal author of this proposal is Richard G. Biggins (see **ADDRESSES** section) (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 et seq.); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the entry "Madtom yellowfin" under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

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(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (GA, TN, VA)	Entire, except where listed as experimental population below.	T	26	17.95(e)	17.44(c)
Do	do	do	North Fork Holston River and tributaries, VA, TN; South Fork Holston River and tributaries upstream to Ft. Patrick Henry Dam, TN; and Holston River and tributaries downstream to John Sevier Detention Lake Dam, TN.	XN			17.84(e)

§ 17.84 [Amended]

3. It is proposed that Title 50 CFR 17.84 be amended by adding new paragraph (e) as follows:

§ 17.84 Special rules—vertebrates

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(e) Yellowfin madtom *(Noturus flavipinnis).* (1) The yellowfin madtom population identified in paragraph (e)(4) of this section is a nonessential experimental population.

(2) All prohibitions and exceptions listed in § 17.31 and 17.32 apply to this population identified in paragraph (e)(4)

of this section except that it may also be incidentally taken while engaging in fishing, river management, flood control, and other activities authorized by applicable State laws and regulations.

(3) Any violation of State law regulating the take of this species will also be a violation of the Endangered Species Act.

(4) The site for reintroduction of the yellowfin madtom is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. The reintroduction site is within the historic range of this species and is located in the North Fort Holston River in Smyth County, Virginia. It is possible that the species might become established throughout the North Fork Holston River and its tributaries in Virginia and Tennessee, and into the South Fort Holston River and tributaries in Tennessee as far upstream as Fort Patrick Henry Dam, and into the Holston River and tributaries in Tennessee as far as the John Sevier Detention Lake Dam. As the species is not known to inhabit reservoirs and it is unlikely that they could move 100 river miles through these large reservoirs, the possibility of this population contracting extant wild populations is unlikely.

(5) The reintroduced population will be checked periodically to determine its condition. Of special concern will be the annual reproductive success of the population. The movement patterns of the released individuals and the overall health of the population will also be observed.

Dated: June 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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